Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 34(a)(1)	)	
of the Public Utility Holding Company	)	GC Docket No. 96-101
Act of 1935, as added by the	)	
Telecommunications Act of 1996	)	

REPLY COMMENTS

BellSouth Corporation and BellSouth Telecommunications, Inc. (collectively, "BellSouth") hereby reply to comments submitted in response to the Commission's Notice of Proposed Rulemaking, FCC 96-101 (April 25, 1996) ("NPRM").

I. INTRODUCTION.

In its Comments, BellSouth generally endorsed the rules proposed by the Commission (the "Proposed Rules"), but urged the Commission to utilize market entry by "exempt telecommunications companies" ("ETCs") as an opportunity to adopt an approach of regulatory parity. In this context, regulatory parity recognizes that it would be inequitable and anti-competitive to apply disparate regulatory regimes to local exchange carriers ("LECs") like BellSouth and to ETCs engaged in substantially the same activity. Rather than advocate burdening ETCs with the full range of regulation currently burdening LECs, BellSouth suggested a lessening of LEC regulation, while imposing only a bare minimum of requirements on ETCs.

In these Reply Comments, BellSouth responds to those commenters[1] advocating that the Proposed Rules be revised to provide a more restrictive role for the Commission in considering ETC applications.[2]

II. DESIGNATION PROCESS

In the NPRM, the Commission proposes that its scope of inquiry be very narrow.[3] In its Comments, BellSouth urged the Commission to require additional information of ETC applicants in order to facilitate the Commission's consideration of the application as well as to enable interested parties to provide meaningful comment.[4] Several commenters

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[1] See Comments filed by The Southern Company, Cinergy Corp. and Entergy Corporation.

[2] In its Comments, BellSouth also indicated that the Commission should relieve Price Cap LECs from the burdens of the Commission's cost allocation rules rather than impose unnecessary cross-subsidy safeguards on the activities of ETCs which are not subject to rate-of-return regulation. BellSouth did not advocate the application of the inherently arbitrary Commission cost allocation rules to rate-of-return activities of public utility holding companies ("PUHCs"). Rather, it was advocated that appropriate cross-subsidy safeguards should be adopted. Comments of BellSouth at 5 and footnote 10. Several other commenters have also raised the cross-subsidy concern. See Comments of Cincinnati Bell Telephone Company at 3 ("[D]ue to their regulated gas and electric operations, the holding companies will be in a position to subsidize their telecommunications operations through the rates charged to their gas and electric customers unless appropriate safeguards are put in place.") and Comments of The United States Telephone Association at 1 ("[T]he Commission must balance [the interest in avoiding barriers to entry] against the need to ensure that cross subsidization is not permitted."). To the extent that the rationale for imposing cross-subsidy restrictions on ETCs is based upon the rate-of-return nature of their affiliated PUHCs, BellSouth endorses the need to impose appropriate restrictions.

[3] NPRM, ¶ 2.

[4] See Comments of BellSouth at § II.B.

raise the concern that the Proposed Rules leave the Commission with a meaningless role.[5] In its Comments, The New Jersey Division of the Ratepayer Advocate cited the Commission's open video systems Order and its statement that "a streamlined certification process does not mean ... that the Commission may not request and review necessary information".[6]

Other commenters[7] advocate that the Proposed Rules be diluted to render the Commission's role less meaningful. In its Comments, The Southern Company urges the Commission to narrow the scope of the "material change in facts" requirement of the Proposed Rules and to impose a presumption in favor of maintained ETC status under such "changed fact" circumstances.[8] Any such narrowing of this requirement is unjustified

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[5] See Comments of ALTS at 2 and 3 (the Proposed Rules "make the ETC determination largely ministerial"); Comments of The City of New Orleans at 6 (allowing more expansive comments than those contemplated by the Proposed Rules "will prevent any uninformed 'rubber stamping' of whatever information an applicant may choose to submit"); and Comments of American Communications Services, Inc. at 4 (the Proposed Rules "make processing of ETC applications a largely ministerial function"). The ALTS Comments indicated that the requirement of a mere certification concerning planned activities "would eviscerate the requirement that utilities seek ETC status. If the Congress intended all companies to automatically have ETC status, it would have done so without including a requirement that the utilities apply to the Commission for ETC status." Comments of ALTS at footnote 4.

[6] Comments of The New Jersey Division of the Ratepayer Advocate at 4.

[7] See Comments filed by The Southern Company, Cinergy Corp. and Entergy Corporation.

[8] Comments of the Southern Company at § 10. The Proposed Rules require that an ETC notify the Commission of a "material change in facts" within 30 days of any such change. Such changed facts would result in either a new ETC application being filed, no change to ETC status (with the ETC being required to explain why no change is justified) or a relinquishment of ETC status.

and inappropriate. The Southern Company proposes to effectively substitute its own judgment for the judgment of the Commission when assessing the impact of a significant change in its ETC's businesses.[9] It also proposes that the Commission should adopt a presumption in favor of continued ETC status under circumstances where a third party notifies the Commission of its belief that a "material change in facts" has occurred.

The Southern Company's suggestions are inappropriate and should not be adopted by the Commission. It is the Commission which must make the determination as to whether or not a given set of circumstances should impact an ETC's status. The Commission cannot support a system where the ETC itself acts as the arbiter of its own compliance with the requirements of the Commission's rules. It is also inappropriate to place a burden on third parties when notifying the Commission of a "material change in facts". It is the ETC and its affiliates which are in the best position to make a showing in this area. Third parties do not have access to all of the facts and circumstances surrounding any such change.

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[9] It is noted that on June 14, 1996, the Commission granted ETC status to several of The Southern Company's affiliates. In the Orders granting such status, the Commission did not impose any requirement concerning a "material change in facts". See Southern Information Holding Company, Inc., Southern Information 1, Inc. and Southern Information 2, Inc., ___ FCC Rcd ___, (DA 96-951, Rel. June 14, 1996) and Southern Telecom Holding Company, Inc., Southern Telecom 1, Inc. and Southern Telecom 2, Inc., ___ FCC Rcd ___, (DA 96-952, Rel. June 14, 1996). As set forth in the Comments of BellSouth, it is essential that such a requirement be made applicable to entities obtaining ETC status prior to the enactment of rules pursuant to the NPRM. See Comments of BellSouth at 15.

In its Comments, Cinergy Corp. advocates dilution of the requirement that an entity "be engaged" in telecommunications activity in order to be an ETC.[10] Cinergy Corp. suggests that an applicant not only need not actually "be engaged" in the relevant activity,[11] but that the entity need not even be in existence. Such an interpretation flies in the face of the clear language of the 1996 Act. ETC status is not to be taken lightly and should not be granted to unformed entities for the sole purpose of enabling a PUHC to "bank" this status for potential future entities. The Proposed Rules, with the amendments suggested or supported by BellSouth are not burdensome or time-consuming and can be quickly met following formation of actual entities.

Cinergy Corp. suggests yet another emasculating change to the Proposed Rules. It is suggested that the "material change in facts" requirement not cover facts which relate to the "brief description of the planned activities" requirement in the Proposed Rules.[12] In other words, Cinergy Corp. suggests that the "brief description" requirement have no meaning at all. If an applicant certifies to the Commission that it intends to undertake a certain set of activities, there would be no obligation to notify the Commission if the ETC undertakes a wholly different set of activities, so long as the actual business is otherwise

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[10] See §34(a)(1) of the Public Utility Holding Company Act of 1935 ("PUHCA"), 15 U.S.C. 79, et seq., as amended by the Telecommunications Act of 1996 ("1996 Act"), Pub.L. 104-104, 110 Stat. 56 (1996).

[11] See Comments of BellSouth at § III.A. for a discussion of BellSouth's views on the proper scope of the "be engaged" requirement.

[12] Comments of Cinergy Corp. at 4. See Proposed Rules, §1.4002(a).

"an ETC-authorized" activity. Such an approach renders meaningless the ETC application process.

Entergy Corporation goes even further in attacking the substance of the Commission's role in the ETC process. It suggests that the Commission should "flexibly interpret" the "exclusivity" requirement of Section 34(a)(1) of the PUHCA and should give the terms "related and incidental" a "broad interpretation".[13] Entergy Corporation suggests that the Proposed Rules be changed to provide that "exclusively" means "predominantly" and that "related and incidental" includes non-telecommunications activities undertaken by a "predominantly telecommunications enterprise". As Entergy Corporation envisions the future world, ETC status is appropriate if the applicant simply undertakes to dispose of clearly prohibited activities when it is convenient or, if not convenient, not to dispose of them at all, if the "investment consists of a minority interest in a predominantly telecommunications enterprise".[14] Such an Alice in Wonderland interpretation of the requirements of the 1996 Act cannot be adopted by the Commission.

Finally, Entergy Corporation suggests that the SEC should not be entitled to receive a copy of any ETC application because "the SEC has no authority to review ETC applications" and because a PUHC is "permitted under the Telecommunications Act to acquire and hold the securities of an ETC".[15] Such a rationale for eliminating the simple and non-time consuming act of serving a copy of an application on the SEC is

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[13] Comments of Entergy Corporation at 4 and 7, respectively.

[14] Comments of Entergy Corporation at 8.

[15] Comments of Entergy Corporation at 9.

unpersuasive. The SEC maintains jurisdiction over the activities of the PUHC affiliate of the ETC applicant and, along with State commissions and the FERC is charged with ensuring that no improper cross-subsidies exist between the rate-of-return regulated PUHCs and their ETCs. It is appropriate for the SEC to receive copies of the detailed application which sets forth the intended activities of the ETC, rather than just the order issued by the FCC.[16]

[16] It is also noted that the Proposed Rules provide that ETC status is automatically granted if the Commission fails to act within 60 days of the date of the application. See Proposed Rules §1.4004. Under such circumstances, the SEC would receive no separate notice concerning the application or the granting of ETC status.

III. CONCLUSION.

BellSouth believes that the intent of Congress and the public interest would be best served by adopting the positions advocated by BellSouth in its Comments and in these Reply Comments and urges the Commission so to act.

Respectfully submitted,

BELLSOUTH CORPORATION
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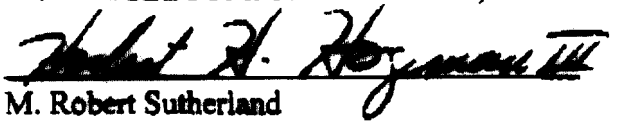
By: 

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CERTIFICATE OF SERVICE

I certify that I have this 3rd day of July, 1996 served parties to this with a copy of the foregoing REPLY COMMENTS OF BELLSOUTH by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed below.

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